

[STAFF WORKING DRAFT]

JANUARY 4, 2007

110TH CONGRESS
1ST SESSION

S. _____

To amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY —, 2007

Mr. _____ (for himself, Mr. _____, and Mr. _____)
) introduced the following bill; which was read twice and referred to the
Committee on _____

A BILL

To amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Consumer Phone Records Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Unauthorized acquisition, use, or sale of confidential customer proprietary network telephone information.
- Sec. 3. Enhanced confidentiality procedures.
- Sec. 4. Penalties; extension of confidentiality requirements to other entities.
- Sec. 5. Enforcement by Federal Trade Commission.
- Sec. 6. Concurrent enforcement by Federal Communications Commission.
- Sec. 7. Enforcement by States.
- Sec. 8. Preemption of State law.
- Sec. 9. Consumer outreach and education.

3 **SEC. 2. UNAUTHORIZED ACQUISITION, USE, OR SALE OF**
4 **CONFIDENTIAL CUSTOMER PROPRIETARY**
5 **NETWORK TELEPHONE INFORMATION.**

6 (a) IN GENERAL.—It is unlawful for any person—
7 (1) to acquire or use the customer proprietary
8 network information of another person without that
9 person's affirmative written consent, which shall in-
10 clude electronic consent that meets the requirements
11 of the Electronic Signatures in Global and National
12 Commerce Act (15 U.S.C. 7001 et seq.);
13 (2) to misrepresent that another person has
14 consented to the acquisition or use of such other
15 person's customer proprietary network information
16 in order to acquire such information;
17 (3) to obtain unauthorized access to the data
18 processing system or records of a telecommuni-
19 cations carrier or an IP-enabled voice service pro-

1 vider in order to acquire the customer proprietary
2 network information of 1 or more other persons;

3 (4) to sell, or offer for sale, customer propri-
4 etary network information; or

5 (5) to request that another person obtain cus-
6 tomer proprietary network information from a tele-
7 communications carrier or IP-enabled voice service
8 provider, knowing that the other person will obtain
9 the information from such carrier or provider in any
10 manner that is unlawful under this subsection.

11 (b) EXCEPTIONS.—

12 (1) APPLICATION WITH SECTION 222 OF COM-
13 MUNICATIONS ACT OF 1934.—Subsection (a) does
14 not prohibit a telecommunications carrier or an IP-
15 enabled voice service provider or any third party
16 that lawfully obtains customer proprietary network
17 information from a carrier or provider from engag-
18 ing in any act or practice that was not prohibited by
19 section 222 of the Communications Act of 1934 (47
20 U.S.C. 222) or regulations that are consistent with
21 the provisions of section 222, as that section and
22 those regulations were in effect on the day before
23 the date of enactment of this Act.

24 (2) APPLICATION OF OTHER LAWS.—This Act
25 does not prohibit any act or practice otherwise au-

1 thorized by law, including any lawfully authorized
2 investigative, protective, or intelligence activity of a
3 law enforcement agency or the United States, a
4 State, or a political subdivision of a State, or an in-
5 telligence agency of the United States.

6 (3) TREATMENT OF IP-ENABLED VOICE SERV-
7 ICE PROVIDERS.—Notwithstanding any other provi-
8 sion of this section, an IP-enabled voice service pro-
9 vider may engage in any act or practice with respect
10 to customer proprietary network information in
11 which a telecommunications carrier may engage
12 under paragraph (1) of this subsection.

13 (4) CALLER ID.—Nothing in this Act prohibits
14 the use of caller identification services by any person
15 to identify the originator of telephone calls received
16 by that person.

17 (c) PRIVATE RIGHT OF ACTION FOR PROVIDERS.—

18 (1) IN GENERAL.—A telecommunications car-
19 rier or IP-enabled voice service provider may bring
20 a civil action in an appropriate State court, or in
21 any United States district court that meets applica-
22 ble requirements relating to venue under section
23 1391 of title 28, United States Code, or for any ju-
24 dicial district in which the carrier or service provider
25 resides or conducts business—

1 (A) based on a violation of this section or
2 the regulations prescribed under this section to
3 enjoin such violation;

4 (B) to recover for actual monetary loss
5 from such a violation, or to receive \$11,000 in
6 damages for each such violation, whichever is
7 greater; or

8 (C) both.

9 (2) TREBLE DAMAGES.—If the court finds that
10 the defendant willfully or knowingly violated this
11 section or the regulations prescribed under this sec-
12 tion, the court may, in its discretion, increase the
13 amount of the award to an amount equal to not
14 more than 3 times the amount available under para-
15 graph (1) of this subsection.

16 (3) INFLATION ADJUSTMENT.—The \$11,000
17 amount in paragraph (1)(B) shall be adjusted for in-
18 flation as if it were a civil monetary penalty, as de-
19 fined in section 3(2) of the Federal Civil Penalties
20 Inflation Adjustment Act of 1996 (28 U.S.C. 2461
21 note).

22 (d) PRIVATE RIGHT OF ACTION FOR CONSUMERS.—

23 (1) IN GENERAL.—An individual who has been
24 injured as a direct result of his or her confidential
25 proprietary network information being obtained,

1 used, or sold in violation of this section may file a
2 civil action in any court of competent jurisdiction
3 against the person who caused the injury by vio-
4 lating this section.

5 (2) REMEDIES.—A court in which such civil ac-
6 tion has been brought may award damages of not
7 more than \$11,000 for each violation of this section
8 with respect to the plaintiff's customer proprietary
9 network information.

10 (3) TREBLE DAMAGES.—If the court finds that
11 the defendant willfully or knowingly violated this
12 section or the regulations prescribed under this sec-
13 tion, the court may, in its discretion, increase the
14 amount of the award to not more than 3 times the
15 damages determined by the court under paragraph
16 (2).

17 (4) INFLATION ADJUSTMENT.—The \$11,000
18 amount in paragraph (2) shall be adjusted for infla-
19 tion as if it were a civil monetary penalty, as defined
20 in section 3(2) of the Federal Civil Penalties Infla-
21 tion Adjustment Act of 1996 (28 U.S.C. 2461 note).

22 (e) CIVIL PENALTY.—

23 (1) IN GENERAL.—Any person who violates this
24 section shall be subject to a civil penalty of not more
25 than \$11,000 for each violation or each day of a

1 continuing violation, except that the amount as-
2 sessed for any continuing violation shall not exceed
3 a total of \$11,000,000 for any single act or failure
4 to act.

5 (2) SEPARATE VIOLATIONS.—A violation of this
6 section with respect to the customer proprietary net-
7 work information of 1 person shall be treated as a
8 separate violation from a violation with respect to
9 the customer proprietary network information of any
10 other person.

11 (f) LIMITATION.—Nothing in this Act or section 222
12 of the Communications Act of 1934 (47 U.S.C. 222) au-
13 thorizes a customer to bring a civil action against a tele-
14 communications carrier or an IP-enabled voice service pro-
15 vider.

16 (g) DEFINITIONS.—In this section:

17 (1) CUSTOMER PROPRIETARY NETWORK INFOR-
18 MATION.—The term “customer proprietary network
19 information” has the meaning given that term by—

20 (A) section 222(i)(1) of the Communica-
21 tions Act of 1934 (47 U.S.C. 222(i)(1)) with
22 respect to telecommunications carriers; and

23 (B) section 715(b)(1) of such Act with re-
24 spect to IP-enabled voice service providers.

1 (2) IP-ENABLED VOICE SERVICE.—The term
2 “IP-enabled voice service” means the provision of
3 real-time 2-way voice communications offered to the
4 public, or such classes of users as to be effectively
5 available to the public, transmitted through cus-
6 tomer premises equipment using TCP/IP protocol,
7 or a successor protocol, for a fee (whether part of
8 a bundle of services or separately) with intercon-
9 nection capability such that the service can originate
10 traffic to, or terminate traffic from, the public
11 switched telephone network.

12 (3) TELECOMMUNICATIONS CARRIER.—The
13 term “telecommunications carrier” has the meaning
14 given it by section 3(44) of the Communications Act
15 of 1934 (47 U.S.C. 3(44)).

16 **SEC. 3. ENHANCED CONFIDENTIALITY PROCEDURES.**

17 (a) IN GENERAL.—Within 180 days after the date
18 of enactment of this Act, the Federal Communications
19 Commission shall—

20 (1) revise or supplement its regulations, to the
21 extent the Commission determines it is necessary, to
22 require a telecommunications carrier or IP-enabled
23 voice service provider to protect—

24 (A) the security and confidentiality of cus-
25 tomer proprietary network information (as de-

1 fined in section 222(i)(1) of the Communica-
2 tions Act of 1934 (47 U.S.C. 222(i)(1)) or as
3 defined in section 715(b)(1) of such Act with
4 respect to IP-enabled voice service providers);

5 (B) customer proprietary network informa-
6 tion against any anticipated threats or hazards
7 to its security or confidentiality; and

8 (C) customer proprietary network informa-
9 tion from unauthorized access or use that could
10 result in substantial harm or inconvenience to
11 its customers; and

12 (2) ensure that any revised or supplemental
13 regulations are similar in scope and structure to the
14 Federal Trade Commission's regulations in part 314
15 of title 16, Code of Federal Regulations, as such
16 regulations are in effect on the date of enactment of
17 this Act, taking into consideration the differences
18 between financial information and customer propri-
19 etary network information.

20 (b) COMPLIANCE CERTIFICATION.—Each tele-
21 communications carrier and IP-enabled voice service pro-
22 vider to which the regulations under subsection (a) and
23 section 222 or 715 of the Communications Act of 1934
24 apply shall file with the Commission annually a certifi-

1 cation that, for the period covered by the filing, it has been
2 in compliance with those requirements.

3 **SEC. 4. PENALTIES; EXTENSION OF CONFIDENTIALITY RE-**
4 **QUIREMENTS TO OTHER ENTITIES.**

5 (a) PENALTIES.—Title V of the Communications Act
6 of 1934 (47 U.S.C. 501 et seq.) is amended by inserting
7 after section 508 the following:

8 **“SEC. 509. PENALTIES FOR CONFIDENTIAL CUSTOMER PRO-**
9 **PRIETARY NETWORK INFORMATION VIOLA-**
10 **TIONS.**

11 “(a) CIVIL FORFEITURE.—

12 “(1) IN GENERAL.—Any person determined by
13 the Commission, in accordance with paragraphs (3)
14 and (4) of section 503(b), to have violated section 2
15 of the Protecting Consumer Phone Records Act shall
16 be liable to the United States for a forfeiture pen-
17 alty. A forfeiture penalty under this subsection shall
18 be in addition to any other penalty provided for by
19 this Act. The amount of the forfeiture penalty deter-
20 mined under this subsection shall not exceed
21 \$30,000 for each violation, or 3 times that amount
22 for each day of a continuing violation, except that
23 the amount assessed for any continuing violation
24 shall not exceed a total of \$3,000,000 for any single
25 act or failure to act.

1 “(2) RECOVERY.—Any forfeiture penalty deter-
2 mined under paragraph (1) shall be recoverable pur-
3 suant to section 504(a) of this Act.

4 “(3) PROCEDURE.—No forfeiture liability shall
5 be determined under paragraph (1) against any per-
6 son unless such person receives the notice required
7 by section 503(b)(3) or section 503(b)(4) of this
8 Act.

9 “(4) 2-YEAR STATUTE OF LIMITATIONS.—No
10 forfeiture penalty shall be determined or imposed
11 against any person under paragraph (1) if the viola-
12 tion charged occurred more than 2 years prior to the
13 date of issuance of the required notice or notice or
14 apparent liability.”.

15 (b) EXTENSION OF CONFIDENTIALITY REQUIRE-
16 MENTS TO IP-ENABLED VOICE SERVICE PROVIDERS.—

17 (1) IN GENERAL.—Title VII of the Communica-
18 tions Act of 1934 (47 U.S.C. 601 et seq.) is amend-
19 ed by adding at the end thereof the following:

20 **“SEC. 715. PROTECTION OF CUSTOMER PROPRIETARY NET-**
21 **WORK INFORMATION BY IP-ENABLED VOICE**
22 **SERVICE PROVIDERS.**

23 “(a) IN GENERAL.—

24 “(1) GENERAL DUTY OF CONFIDENTIALITY.—
25 An IP-enabled voice service provider has a duty to

1 protect the confidentiality of proprietary information
2 of, and relating to, other IP-enabled voice service
3 providers, telecommunications carriers, equipment
4 manufacturers, and customers, including tele-
5 communications carriers reselling telecommuni-
6 cations services provided by another telecommuni-
7 cations carrier or an IP-enabled voice service pro-
8 vider.

9 “(2) CARRIER INFORMATION.—An IP-enabled
10 voice service provider that receives or obtains propri-
11 etary information from a telecommunications carrier
12 or another IP-enabled voice service provider for pur-
13 poses of providing any telecommunications service
14 shall use such information only for such purpose,
15 and shall not use such information for its own mar-
16 keting efforts.

17 “(3) CUSTOMER PROPRIETARY NETWORK IN-
18 FORMATION.—Within 90 days after the date of en-
19 actment of the Protecting Consumer Phone Records
20 Act, the Commission shall initiate a rulemaking pro-
21 ceeding to apply the requirements of section 222,
22 and regulations thereunder, to IP-enabled voice serv-
23 ice providers to the same extent, in the same man-
24 ner, and subject to the same penalties for failure to

1 comply with those requirements as are applicable to
2 telecommunications carriers.

3 “(b) DEFINITIONS.—In this section:

4 “(1) CUSTOMER PROPRIETARY NETWORK IN-
5 FORMATION.—The term ‘customer proprietary net-
6 work information’ has the meaning given that term
7 by section 222(i) of this Act, except that—

8 “(A) the reference in section 222(i)(1)(B)
9 of this Act to telephone exchange service or
10 telephone toll service shall be considered to
11 refer also to IP-enabled voice service; and

12 “(B) it does not include information that
13 is related to non-voice service features bundled
14 with IP-enabled voice service.

15 “(2) IP-ENABLED VOICE SERVICE.—The term
16 “IP-enabled voice service” means the provision of
17 real-time 2-way voice communications offered to the
18 public, or such classes of users as to be effectively
19 available to the public, transmitted through cus-
20 tomer premises equipment using IP protocol, or a
21 successor protocol, for a fee (whether part of a bun-
22 dle of services or separately) with interconnection ca-
23 pability such that the service can originate traffic to,
24 or terminate traffic from, the public switched tele-
25 phone network.

1 “(3) OTHER TERMS.—Except as provided in
2 paragraph (1), any term used in subsection (a) that
3 is defined or used in section 222 of this Act has the
4 same meaning as when used in that section.”.

5 (2) DUTY OF TELECOMMUNICATIONS CARRIERS
6 WITH RESPECT TO CPNI FROM IP-ENABLED VOICE
7 SERVICE PROVIDERS.—Section 222(a) of the Com-
8 munications Act of 1934 (47 U.S.C. 222(a)) is
9 amended by inserting after “carrier.” the following:
10 “A telecommunications carrier has the same duties
11 under this section with respect to the confidentiality
12 of proprietary information of, or relating to, an IP-
13 enabled voice service provider, and with respect to
14 customer proprietary network information received
15 or obtained from an IP-enabled voice service pro-
16 vider, as it has under this section with respect to an-
17 other telecommunications carrier.”.

18 (c) TELECOMMUNICATIONS CARRIER NOTIFICATION
19 REQUIREMENT.—Section 222 of the Communications Act
20 of 1934 (47 U.S.C. 222), is amended—

21 (1) by redesignating subsection (h) as sub-
22 section (i);

23 (2) by inserting after subsection (g) the fol-
24 lowing new subsection:

25 “(h) NOTICE OF VIOLATIONS.—

1 “(1) IN GENERAL.—The Commission shall by
2 regulation require each telecommunications carrier
3 to notify a customer within 14 calendar days after
4 the carrier or provider is notified of, or becomes
5 aware of, an incident in which customer proprietary
6 network information relating to such customer was
7 disclosed to someone other than the customer in vio-
8 lation of this section or section 2 of the Protecting
9 Consumer Phone Records Act.

10 “(2) LAW ENFORCEMENT AND HOMELAND SE-
11 curity RELATED DELAYS.—Notwithstanding para-
12 graph (1), a telecommunications carrier may delay
13 the required notification for a reasonable period of
14 time if—

15 “(A) a Federal or State law enforcement
16 agency determines that giving notice within the
17 14-day period would materially impede a civil or
18 criminal investigation; or

19 “(B) a Federal national security agency or
20 the Department of Homeland Security deter-
21 mines that giving notice within the 14-day pe-
22 riod would threaten national or homeland secu-
23 rity.”.

1 (d) STATUTE OF LIMITATIONS.—Section
2 503(b)(6)(B) of the Communications Act of 1934 (47
3 U.S.C. 503(b)(6)(B)) is amended to read as follows:

4 “(B) such person does not hold a broad-
5 cast station license issued under title III of this
6 Act and—

7 “(i) the person is charged with vio-
8 lating section 222 or 715 and the violation
9 occurred more than 2 years prior to the
10 date of issuance of the required notice or
11 notice of apparent liability; or

12 “(ii) the person is charged with vio-
13 lating any other provision of this Act and
14 the violation occurred more than 1 year
15 prior to the date of issuance of the re-
16 quired notice or notice of apparent liabil-
17 ity.”.

18 (e) APPLICATION OF CABLE SUBSCRIBER PRIVACY
19 RULES TO IP-ENABLED VOICE SERVICE PROVIDERS.—
20 Section 631 of the Communications Act of 1934 (47
21 U.S.C. 551) is amended by adding at the end the fol-
22 lowing:

23 “(i) CUSTOMER PROPRIETARY NETWORK INFORMA-
24 TION.—This section does not apply to customer propri-
25 etary network information (as defined in section 715(b)(1)

1 of this Act) as it relates to the provision of IP-enabled
2 voice service (as defined in section 715(b)(2) of this Act)
3 by a cable operator to the extent that section 715 of this
4 Act and section 2 of the Protecting Consumer Phone
5 Records Act applies to such information.”.

6 (f) CONSUMER CONTROL OF WIRELESS PHONE NUM-
7 BERS.—Section 222 of the Communications Act of 1934
8 (47 U.S.C. 222), as amended by subsection (d), is further
9 amended by adding at the end the following:

10 “(j) WIRELESS CONSUMER PRIVACY PROTECTION.—

11 “(1) IN GENERAL.—A provider of commercial
12 mobile services, or any direct or indirect affiliate or
13 agent of such a provider, may not provide the wire-
14 less telephone number information of any customer
15 to any wireless directory assistance service unless
16 the mobile service provider—

17 “(A) provides a conspicuous, separate no-
18 tice to the customer informing the customer of
19 the right not to be listed in any wireless direc-
20 tory assistance service; and

21 “(B) obtains express prior authorization
22 for listing from such customer, separate from
23 any authorization obtained to provide such cus-
24 tomer with commercial mobile service, or any
25 calling plan or service associated with such

1 commercial mobile service, and such authoriza-
2 tion has not been subsequently withdrawn.

3 “(2) COST-FREE DE-LISTING.—A provider of
4 commercial mobile services, or any direct or indirect
5 affiliate or agent of such a provider, may no longer
6 provide the wireless telephone number information of
7 any customer to any wireless directory assistance
8 service if requested by that customer without any
9 cost to the customer.

10 “(3) PUBLICATION OF DIRECTORIES PROHIB-
11 ITED.—A provider of commercial mobile services, or
12 any direct or indirect affiliate or agent of such a
13 provider, may not publish, in printed, electronic, or
14 other form, or sell or otherwise disseminate, an indi-
15 vidual’s wireless telephone information held by any
16 wireless directory assistance service, or any portion
17 or segment thereof, unless the mobile service pro-
18 vider—

19 “(A) provides a conspicuous, separate no-
20 tice to the customer informing the customer of
21 the right not to be listed; and

22 “(B) obtains express prior authorization
23 for listing from such customer, separate from
24 any authorization obtained to provide such cus-
25 tomer with commercial mobile service, or any

1 calling plan or service associated with such
2 commercial mobile service, and such authoriza-
3 tion has not been subsequently withdrawn.

4 “(4) NO CONSUMER FEE FOR RETAINING PRI-
5 VACY.—A provider of commercial mobile services
6 may not charge any customer for exercising any of
7 the rights described under this subsection.

8 “(5) STATE AND LOCAL LAWS PRE-EMPTED.—
9 To the extent that any State or local government
10 imposes requirements on providers of commercial
11 mobile services, or any direct or indirect affiliate or
12 agent of such providers, that are inconsistent with
13 the requirements of this subsection, this subsection
14 preempts such State or local requirements.

15 “(6) DEFINITIONS.—In this subsection:

16 “(A) WIRELESS TELEPHONE NUMBER IN-
17 FORMATION.—The term ‘wireless telephone
18 number information’ means the telephone num-
19 ber, electronic address, and any other identi-
20 fying information by which a calling party may
21 reach a commercial mobile services customer,
22 and which is assigned by a commercial mobile
23 service provider to such customer, and includes
24 the name and address of such customer.

1 “(B) WIRELESS DIRECTORY ASSISTANCE
2 SERVICE.—The term ‘wireless directory assist-
3 ance service’ means any service for connecting
4 calling parties to a commercial mobile service
5 customer when such calling parties themselves
6 do not possess the wireless telephone number
7 information of such customer.”.

8 **SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

9 (a) IN GENERAL.—Except as provided in sections 6
10 and 7 of this Act, section 2 of this Act shall be enforced
11 by the Federal Trade Commission with respect to any en-
12 tity subject to the jurisdiction of the Commission under
13 section 5(a)(2) of the Federal Trade Commission Act (15
14 U.S.C. 45(a)(2)).

15 (b) VIOLATION TREATED AS AN UNFAIR OR DECEP-
16 TIVE ACT OR PRACTICE.—Violation of section 2 shall be
17 treated as an unfair or deceptive act or practice proscribed
18 under a rule issued under section 18(a)(1)(B) of the Fed-
19 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

20 (c) ACTIONS BY THE COMMISSION.—The Commission
21 shall prevent any person from violating this Act in the
22 same manner, by the same means, and with the same ju-
23 risdiction, powers, and duties as though all applicable
24 terms and provisions of the Federal Trade Commission
25 Act (15 U.S.C. 41 et seq.) were incorporated into and

1 made a part of this Act. Any person that violates section
2 2 is subject to the penalties and entitled to the privileges
3 and immunities provided in the Federal Trade Commis-
4 sion Act in the same manner, by the same means, and
5 with the same jurisdiction, powers, and duties as though
6 all applicable terms and provisions of the Federal Trade
7 Commission Act were incorporated into and made a part
8 of this Act. Nothing in section 2(d) of this Act limits any
9 penalty under the Federal Trade Commission Act as that
10 Act is made applicable to violations of section 2 by the
11 preceding sentence.

12 **SEC. 6. CONCURRENT ENFORCEMENT BY FEDERAL COM-**
13 **MUNICATIONS COMMISSION.**

14 (a) IN GENERAL.—The Federal Communications
15 Commission shall have concurrent jurisdiction to enforce
16 section 2.

17 (b) PENALTY; PROCEDURE.—For purposes of en-
18 forcement of that section by the Commission—

19 (1) a violation of section 2 of this Act is
20 deemed to be a violation of a provision of the Com-
21 munications Act of 1934 (47 U.S.C. 151 et seq.)
22 rather than a violation of the Federal Trade Com-
23 mission Act; and

24 (2) the provisions of section 509(a)(2), (3), and
25 (4) of the Communications Act of 1934 shall apply

1 to the imposition and collection of the civil penalty
2 imposed by section 2 of this Act as if it were the
3 civil penalty imposed by section 509(a)(1) of that
4 Act.

5 **SEC. 7. ENFORCEMENT BY STATES.**

6 (a) IN GENERAL.—The chief legal officer of a State,
7 or any other State officer authorized by law to bring ac-
8 tions on behalf of the residents of a State, may bring a
9 civil action, as *parens patriae*, on behalf of the residents
10 of that State in an appropriate district court of the United
11 States to enforce section 2 or to impose the civil penalties
12 for violation of that section, whenever the chief legal offi-
13 cer or other State officer has reason to believe that the
14 interests of the residents of the State have been or are
15 being threatened or adversely affected by a violation of
16 this Act or a regulation under this Act.

17 (b) NOTICE.—The chief legal officer or other State
18 officer shall serve written notice on the Federal Trade
19 Commission and the Federal Communications Commis-
20 sion of any civil action under subsection (a) prior to initi-
21 ating such civil action. The notice shall include a copy of
22 the complaint to be filed to initiate such civil action, except
23 that if it is not feasible for the State to provide such prior
24 notice, the State shall provide such notice immediately
25 upon instituting such civil action.

1 (c) AUTHORITY TO INTERVENE.—Upon receiving the
2 notice required by subsection (b), either Commission may
3 intervene in such civil action and upon intervening—

4 (1) be heard on all matters arising in such civil
5 action; and

6 (2) file petitions for appeal of a decision in such
7 civil action.

8 (d) CONSTRUCTION.—For purposes of bringing any
9 civil action under subsection (a), nothing in this section
10 shall prevent the chief legal officer or other State officer
11 from exercising the powers conferred on that officer by
12 the laws of such State to conduct investigations or to ad-
13 minister oaths or affirmations or to compel the attendance
14 of witnesses or the production of documentary and other
15 evidence.

16 (e) VENUE; SERVICE OF PROCESS.—

17 (1) VENUE.—An action brought under sub-
18 section (a) shall be brought in a district court of the
19 United States that meets applicable requirements re-
20 lating to venue under section 1391 of title 28,
21 United States Code.

22 (2) SERVICE OF PROCESS.—In an action
23 brought under subsection (a)—

1 (A) process may be served without regard
2 to the territorial limits of the district or of the
3 State in which the action is instituted; and

4 (B) a person who participated in an al-
5 leged violation that is being litigated in the civil
6 action may be joined in the civil action without
7 regard to the residence of the person.

8 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
9 ACTION IS PENDING.—If either Commission has insti-
10 tuted an enforcement action or proceeding for violation of
11 section 2 of this Act, the chief legal officer or other State
12 officer of the State in which the violation occurred may
13 not bring an action under this section during the pendency
14 of the proceeding against any person with respect to whom
15 the Commission has instituted the proceeding.

16 **SEC. 8. PREEMPTION OF STATE LAW.**

17 (a) PREEMPTION.—Section 2 and the regulations
18 prescribed pursuant to section 3 of this Act, and sections
19 222 and 715 of the Communications Act of 1934 (47
20 U.S.C. 222) and the regulations prescribed thereunder,
21 preempt any—

22 (1) statute, regulation, or rule of any State or
23 political subdivision thereof that requires a tele-
24 communications carrier or provider of IP-enabled
25 voice service to develop, implement, or maintain pro-

1 cedures for protecting the confidentiality of customer
2 proprietary network information (as defined in sec-
3 tion 222(i)(1) of the Communications Act of 1934
4 (47 U.S.C. 222(i)(1)) or section 715(b)(1) of that
5 Act with respect to IP-enabled voice service pro-
6 viders) held by that telecommunications carrier or
7 provider of IP-enabled voice service, or that restricts
8 or regulates a carrier's or provider's ability to use,
9 disclose, or permit access to such information; and
10 (2) any such statute, regulation, or rule, or ju-
11 dicial precedent of any State court under which li-
12 ability is imposed on a telecommunications carrier or
13 provider of IP-enabled voice service for failure to
14 comply with any statute, regulation, or rule de-
15 scribed in paragraph (1) or with the requirements of
16 section 2 or the regulations prescribed pursuant to
17 section 3 of this Act, or with section 222 or 715 of
18 the Communications Act of 1934 or the regulations
19 prescribed thereunder.

20 (b) LIMITATION ON PREEMPTION.—This Act shall
21 not be construed to preempt the applicability of—

22 (1) State laws that are not specific to the mat-
23 ters described in subsection (a), including State con-
24 tract or tort law; or

1 (2) other State laws to the extent those laws re-
2 late to acts of fraud or computer crime.

3 **SEC. 9. CONSUMER OUTREACH AND EDUCATION.**

4 (a) IN GENERAL.—Within 180 days after the date
5 of enactment of this Act, the Federal Trade Commission
6 and Federal Communications Commission shall jointly es-
7 tablish and implement a media and distribution campaign
8 to teach the public about the protection afforded customer
9 proprietary network information under this Act, the Fed-
10 eral Trade Commission Act and the Communications Act
11 of 1934.

12 (b) CAMPAIGN REQUIREMENTS.—The campaign
13 shall—

14 (1) promote understanding of—

15 (A) the problem concerning the theft and
16 misuse of customer proprietary network infor-
17 mation;

18 (B) available methods for consumers to
19 protect their customer proprietary network in-
20 formation; and

21 (C) efforts undertaken by the Federal
22 Trade Commission and the Federal Commu-
23 nications Commission to prevent the problem;
24 and

- 1 (2) explore various distribution platforms to ac-
- 2 complish the goal set forth in paragraph (1).

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